

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

JAMES D. WALKER,

Movant,

V.

UNITED STATES OF AMERICA,

Respondent.

CIVIL ACTION NO.

5:07-CV-006-C

(Criminal No. 5:06-CR-020(01)-C)

USCA No. 07-10652

ORDER

The United States Court of Appeals for the Fifth Circuit remanded this case for a factual determination as to whether Movant James D. Walker counsel failed to file a requested notice of appeal.


Under authority of 28 U.S.C. § 636(b), the issue of counsel's failure to file a requested notice of appeal was referred to United States Magistrate Judge Nancy M. Koenig. An attorney was appointed to represent Walker, and an evidentiary hearing was held on February 19, 2009.

The Magistrate Judge entered her Findings of Fact and Conclusions of Law on March 11, 2009. Walker has not filed any objections.

This Court has made an independent review of the record in this case. The Magistrate Judge’s findings and conclusions are hereby **adopted**. The Court finds that Walker did not request that his counsel file an appeal on his behalf; rather, he waived his right to appeal and agreed with counsel not to file an appeal.

It is, therefore, ORDERED that the Findings of Fact and Conclusions of Law of the United States Magistrate Judge are adopted and this civil action shall be returned to the United States Court of Appeals for the Fifth Circuit.

Dated April 3, 2009.


SAM R. CUMMINGS
UNITED STATES DISTRICT COURT